



2015 SESSION

ADDITIONAL DOCUMENTS

Business Page

[Signed by Chairman]

Roll Call

Standing Committee Reports

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Proxy Forms

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***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

***Witness Statements that were not presented as exhibits.**

Montana Historical Society Archives

225 N. Roberts

Helena MT 59620-1201

2015 Legislative

E-Document Specialist Susie Hamilton

BUSINESS REPORT
MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION
SENATE TAXATION COMMITTEE

Date: Friday, March 6, 2015
Place: Capitol

Time: 8:00 AM
Room: 405

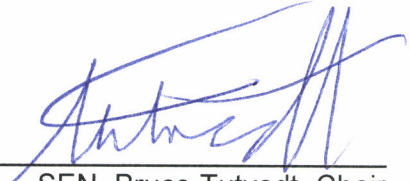
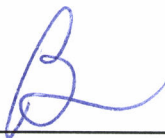
BILLS and RESOLUTIONS HEARD:

HB 359 - Revise laws related to inflation indexing of income taxes - Rep. Ed Lieser
SB 378 - Revise military pay exemption from state income taxes - Sen. Elsie Arntzen

EXECUTIVE ACTION TAKEN:

SB 156
HB 169

Comments:



SEN. Bruce Tutvedt, Chair

MONTANA STATE SENATE ROLL CALL

TAXATION COMMITTEE

DATE: March 6, 2015

NAME	PRESENT	ABSENT/ EXCUSED
Chairman Tutvedt	✓	
Vice Chairman, Thomas	✓	
Senator Ankney	✓	
Senator Barrett	✓	
Senator Blasdel		✓
Senator Brown	✓	
Senator Cohenour	✓	
Senator Hoven	✓	
Senator Kaufmann	✓	
Senator Malek	✓	
Senator Pomnichowski	✓	
Senator Taylor		✓

12 Committee Members

BILL TABLED NOTICE


SENATE TAXATION COMMITTEE

The **SENATE TAXATION COMMITTEE** TABLED


HB 169 - Revise individual income tax laws - Rep. Art Wittich

SB 156 - Revise tax protest laws - Sen. Bruce Tutvedt

by motion, on **Friday, March 6, 2015** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).



(For the Committee)



(For the Secretary of the Senate)
1:00p / 3/6
(Time) (Date)

March 6, 2015 (12:47pm)

Julie Ward, Secretary

Phone: 406-444-4685

MONTANA STATE SENATE
Visitors Register
SENATE TAXATION COMMITTEE

Friday, March 6, 2015

SB 378 - Revise military pay exemption from state income taxes

Sponsor: **Sen. Elsie Arntzen**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE TAXATION COMMITTEE

Friday, March 6, 2015

HB 359 - Revise laws related to inflation indexing of income taxes

Sponsor: Rep. Ed Lieser

PLEASE PRINT[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Coles, Jaret

Date: 3-6-2015Bill No. SB 378

From: JAMES C. WANGERIN, CPA <jim@wangerin.com>
Sent: Saturday, March 07, 2015 8:57 AM
To: Bruce Tutvedt; Coles, Jaret
Cc: emarntzen@gmail.com
Subject: adding to record of hearing on SB 378
Attachments: comment in opposition to amend SB 378 to eliminate the exemption for State Active Duty National Guard.docx; additional testimony in opposition to SB 378.pdf

Dear Senator Tutvedt, Chairman of Senate Taxation Committee,

Jaret Coles indicated that you were the one who made decisions on what is included in the official record for the hearing.

I think that my comments in regards to amendment should be included in record since I was not aware of the proposed amendment until it was announced at the hearing on March 6.

I think that my supplemental comments in opposition to SB 378 should be included in the record since many answers to the questions posed by Senate Committee members were answered in a way did NOT fully convey that there were legitimate disputes as to whether the term "active duty in the Armed Forces" includes all Title 32 National Guard duty.

I am attaching my two supplemental comments for inclusion in the record.

Please respond with your determination as to whether to include my comments in the record.

I will also be having further comment for the record and the media after having a chance to make a partial transcript of the recording of the hearing.

James C. Wangerin, CPA

James C. Wangerin, CPA
413 Main St.
Deer Lodge, MT 59722
P: (406) 846-1862
F: (406) 846-7517

Disclosure: We inform you that any advice contained herein (including in any attachment) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer, and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

This memo is to provide supplemental comments in opposition to SB 378 from James C. Wangerin, CPA.

I favor voluntary compliance with tax codes. I am opposed to SB 378 because the difficulty in verification of exemption under SB 378 is indicative that the ambiguity remains.

The Department of Revenue indicated they had enforced compliance of \$400,000 in regards to military pay exemption. The collection of \$400,000 through enforced compliance would have deterred Title 32 National Guard members from claiming the exemption.

The need for enforced compliance and deterrent effect is because MCA 15-30-2117 did NOT define what is meant by the term "active duty in the Armed Forces".

There are many inconsistent definitions that could be used for "active duty in the Armed Forces." For example:

1. 10 USC 101 (d) (1) the term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.
2. 32 USC 101 (12) "Active duty" means full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.
3. 10 USC 101 (d) (3) the term "active service" means service on active duty or full-time National Guard duty. THIS IS THE TERM THAT IS USED IN ARM 42.15.214 RESIDENT MILITARY SALARY EXCLUSION
4. 37 USC 101 (18) The term "active duty" means full-time duty in the active service of a uniformed service, and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned.
5. 5 U.S. Code § 5517 (d) "The terms "serve as a member of the armed forces" and "service as a member of the Armed Forces" include participation in exercises or the performance of duty under section 502 of title 32, United States Code, by a member of the National Guard."
6. Active duty — Full-time duty in the active military service of the United States, including active duty or full-time training duty in the Reserve Component. Source: Joint Publication 1-02 Department of Defense Dictionary of Military and Associated Terms
7. Active duty for training — A tour of active duty that is used for training members of the Reserve Component to provide trained units and qualified persons to fill the needs of the Armed Forces in time of war or national emergency and such other times as the national security requires. Source: Joint Publication 1-02 Department of Defense Dictionary of Military and Associated Terms
8. ARM 42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) The following items of military compensation received by a resident service member are exempt from Montana income tax: (c) basic, special, and incentive pay received by a member of the National Guard for active service

authorized by the President of the United States or the Secretary of the Defense for a period of more than 30 consecutive days for the purpose of responding to a national emergency declared by the President and supported by federal funds.

9. Veterans Benefits Act of 2002 SEC. 305. EXTENSION OF PROTECTIONS UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE. Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended— (1) in the first sentence— (A) by striking "and all" and inserting "all"; and (B) by inserting before the period the following: ", and all members of the National Guard on service described in the following sentence"; and (2) in the second sentence, by inserting before the period the following: ", and, in the case of a member of the National Guard, shall include service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds".

The Department of Revenue enforced compliance to collect \$400,000 in assessed taxes and deter National Guard from claiming exemption is based on a mistake regarding Title 32 502 (f) orders that

- "you are ordered by consent of the governor of Montana to an Active Guard Reserve (AGR) status" ... "confirms that your orders are authorized by the governor and not by the President of the United States or the Secretary of Defense as required by ARM 42.15.214(1)(c) in order for your military pay to be exempt." (See attached)
 - 32 U.S. Code § 502 (f) (1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may— (A) without his consent, but with the pay and allowances provided by law; or (B) with his consent, either with or without pay and allowances; be ordered to perform training or other duty in addition to that prescribed under subsection (a). (2) The training or duty ordered to be performed under paragraph (1) may include the following: (A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense. (B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations— (i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and (ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees. (3) Duty without pay shall be considered for all purposes as if it were duty with pay.
 - In fact, all Title 32 orders are by the governor and NO Title 32 orders are by the President.

Since we are dealing with exemption of military pay it makes sense to use definition in 5 U.S. Code § 5517 - Withholding State income taxes. (d) "The terms "serve as a member of the armed forces" and "service as a member of the Armed Forces" includes participation in exercises or the performance of duty under section 502 of title 32, United States Code, by a member of the National Guard."

32 U.S. Code § 502 - Required drills and field exercises (a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

- (1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and
- (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 90 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

- (1) the number of members present equals or exceeds the minimum number prescribed by the President;
- (2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) (1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

- (A) without his consent, but with the pay and allowances provided by law; or
- (B) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a).

(2) The training or duty ordered to be performed under paragraph (1) may include the following:

(A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.

(B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations—

(i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and

(ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.

(3) Duty without pay shall be considered for all purposes as if it were duty with pay.

Ambiguity should be decided in favor of the party that has little or no power to remove the ambiguity. In this case, the ambiguity should be decided in favor of the members of the National Guard. The testimony by both opponents and proponents as to difficulty in verification of exemption under SB 378 is indicative that the ambiguity remains. Voluntary compliance will not be possible under SB 378.

Your military orders further state that "You are ordered by consent of the governor of Montana to an Active Guard/Reserve (AGR) status." Not only does this statement confirm that you are not being called to "active duty" as defined by USC Title 10 or 32, but it also confirms that your orders are authorized by consent of the governor and not by the President of the United States or the Secretary of Defense as required by ARM 42.15.214(1)(c) in order for military pay to be tax exempt.

The Montana law, Montana Administrative Rules, and the U.S. Code cited in this letter support our determination that your Title 32 income is not exempt from Montana income tax and that our adjustment was made correctly. We have enclosed a Statement of Account that shows the current amount of tax, interest and penalty that is due.

We have also enclosed a copy of an article which was featured in a 2011 publication for the Montana National Guard entitled the "Big Sky Guardian." The article addresses the state taxation of National Guard military pay – what you should know, and was written by Col. James Moran, Staff Judge Advocate. Although this article appeared in a 2011 publication, the application of the law has not changed since 2009 and the principles found in this article still apply. Many full-time National Guard members in Montana abide by the rules outlined in this article and correctly pay tax on their Title 32 military pay.

We realize the sensitivity of this issue and are grateful for the service that has been provided by the members of the armed forces residing in Montana. We simply wish to treat all the citizens of Montana fairly and hope that our efforts to help military personnel report their income correctly reflect that desire.

Right to Appeal This Decision

There have been other references made to publications, mediation, representation, etc. that Mr. Wangerin asked us to address specifically. We believe that the details found in this letter and in our previous correspondence provide a fair representation of our position on this issue. We have also followed the correct appeal process as outlined in Montana law.

If you do not agree with this determination, you may appeal, *within 15 days of the date of this letter*, to the Office of Dispute Resolution. The Office of Dispute Resolution serves as the department's independent office of review which, at the request of the taxpayer, may hear taxpayer protests and can either act as a mediator or issue a final department decision. Form APLS102F has been enclosed for the purpose of protesting to the Office of Dispute Resolution if you so choose. This form is also available on the department's website at revenue.mt.gov.

In proposing to amend SB 378 to eliminate the exemption for State Active Duty National Guard, Sen. Arntzen makes a good point that since DNRC firefighters are NOT exempt from Montana income tax that State Active duty should NOT be either.

However, there are major differences between DNRC and State Active Duty.

Under State Active Duty, National Guard can be ordered to fight wild fires in other states. In 2014, Montana governor ordered Montana National Guard to State Active Duty to fight wild fires in Washington.

DNRC employees are covered under social security but State Active Duty is NOT covered under Social Security. This may result in a significant reduction in benefits from other jobs that the civilian soldiers are paying into social security for. (See the attached windfall elimination provision)

In the event of death or disability, State Active Duty also has far lower benefits than active component of the Armed Forces (plus possibly lowering Social Security disability benefits). One of my clients, who was ordered to fight wild fires in Washington, described it as almost as dangerous as combat. He would know as he saved the lives of many soldiers, who were in combat in Afghanistan.

Since Montana does NOT have to pay the employer's share of Social Security taxes on State Active Duty, Montana saves employer taxes approximately equal to the value of exempting State Active Duty from taxation.

Wherefore, I am opposed to the amendment to eliminate tax exemption for State Active Duty.

James C. Wangerin, CPA
413 Main St.
Deer Lodge, MT 59722
P: (406) 846-1862
F: (406) 846-7517